



## AGENDA BILL APPROVAL FORM

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|--|--|---|
| <b>Agenda Subject:</b> Principled Solutions Agreement  |  | <b>Date:</b><br>June 30, 2009   |
| <b>Department:</b><br>Finance  | <b>Attachments:</b><br>Resolution No. 4497 and Agreement | <b>Budget Impact:</b>   |
| <b>Administrative Recommendation:</b><br><br>City Council adopt Resolution No. 4497.   |  |   |
| <b>Background Summary:</b><br><br>The City desires to retain a consultant to serve as a government relations representative before various governmental agencies and political subdivisions on issues that may impact the City, which may include such items as a public facilities district.  |  |   |
| N0706-3<br>A3.16.3   |  |   |
| <b>Reviewed by Council &amp; Committees:</b><br><div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Arts Commission<br/> <input type="checkbox"/> Airport<br/> <input type="checkbox"/> Hearing Examiner<br/> <input type="checkbox"/> Human Services<br/> <input type="checkbox"/> Park Board<br/> <input type="checkbox"/> Planning Comm.         </div> <div> <b>COUNCIL COMMITTEES:</b><br/> <input type="checkbox"/> Finance<br/> <input type="checkbox"/> Municipal Serv.<br/> <input type="checkbox"/> Planning &amp; CD<br/> <input type="checkbox"/> Public Works<br/> <input type="checkbox"/> Other _____         </div> </div> |  | <b>Reviewed by Departments &amp; Divisions:</b><br><div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building<br/> <input type="checkbox"/> Cemetery<br/> <input type="checkbox"/> Finance<br/> <input type="checkbox"/> Fire<br/> <input type="checkbox"/> Legal<br/> <input type="checkbox"/> Public Works<br/> <input type="checkbox"/> Information Services         </div> <div> <input type="checkbox"/> M&amp;O<br/> <input type="checkbox"/> Mayor<br/> <input type="checkbox"/> Parks<br/> <input type="checkbox"/> Planning<br/> <input type="checkbox"/> Police<br/> <input type="checkbox"/> Human Resources         </div> </div> |
| <b>Action:</b><br>Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Referred to _____ Until ____/____/____<br>Tabled _____ Until ____/____/____<br><div style="text-align: right;">Call for Public Hearing ____/____/____</div>  |  |   |
| <b>Councilmember:</b> Backus   |  | <b>Staff:</b> Coleman   |
| <b>Meeting Date:</b> July 6, 2009  |  | <b>Item Number:</b> VIII.B.1  |

**RESOLUTION NO. 4 4 9 7**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR  
AND CITY CLERK TO EXECUTE AN AGREEMENT  
BETWEEN THE CITY OF AUBURN AND PRINCIPLED  
SOLUTIONS FOR CONSULTING SERVICES

WHEREAS, the City desires to retain a consultant to serve as a government relations representative before various governmental agencies and political subdivisions on issues that may impact the City, which may include such items as a public facilities district; and

WHEREAS, Principled Solutions is willing and able to perform these services at a cost that is acceptable to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows:

**Section 1. Purpose.** The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Government Affairs Consulting and Non-Disclosure Agreement between the City of Auburn and Principled Solutions for consulting services which agreement shall be in substantial conformity with the Agreement a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

**Section 2. Implementation.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

**Section 3. Effective Date.** This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF AUBURN

\_\_\_\_\_  
PETER B. LEWIS  
MAYOR

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney

## **GOVERNMENT AFFAIRS CONSULTING AND NON-DISCLOSURE AGREEMENT**

THIS GOVERNMENT AFFAIRS CONSULTING AND NON-DISCLOSURE AGREEMENT ("Agreement") is hereby made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between Principled Solutions ("Consultant"), a sole proprietorship under the laws of the State of Washington, with its office located at 4229 Park Drive Southwest, Olympia, Washington 98512 and the City of Auburn. ("Client"), an incorporated Washington city, with its office located at 25 West Main Street, Auburn, WA 9800 1-4998.

### **WITNESSETH:**

**WHEREAS**, Client desires to enter into this Agreement with Consultant to define and set forth terms and conditions for the performance by the Consultant of specific undertakings contemplated hereby and as may be specifically set forth hereinbelow including, but not limited to, aiding, facilitating and/or supporting Objectives that the Client may be presently progressing or is planning to develop and performing general government affairs consulting in respect to Client Objectives;

**WHEREAS**, Principled Solutions is in the business of providing such services;

**WHEREAS**, in connection with these activities, both Client and Consultant will be providing the other Party, respectively, with information and materials that may be of proprietary or confidential nature as may be necessary to the performance of Consultant of contracted duties;

**WHEREAS**, Consultant and Client wish to evidence by this Agreement the manner in which Consultant will provide consulting services and the way Confidential Information will be treated.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the premises set forth hereinabove, the terms and conditions set forth hereinbelow, and other good and valuable consideration, it is hereby agreed as follows:

### **Article 1. SERVICES TO BE PERFORMED BY CONSULTANT**

**1.1 Scope of Services.** The Consultant is retained and appointed to represent the Client and to provide the following services:

- (a) Serve as lead government relations representative for the Client before the Office of the Governor of the state of Washington, the Washington State legislature, Washington State agencies, other local governments, and any other political subdivision which may impact the Client;
- (b) Attend legislative committee hearings and other meetings, present testimony to such committees and represent Client in meetings with elected officials, their staff and other special interest groups;
- (c) Work with Client to develop clear goals and priorities for government relations activities and aspire to achieve Client's desired objectives;
- (d) As necessary, draft legislation and amendments as well as issue/position statements for Client;
- (e) As desired and needed, arrange for Client to testify before committees and to meet with elected officials and their staff, and;

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(f) Maintain regular communications via phone, fax and e-mail with the Client's designated contact person or persons regarding all activities taken on behalf of Client.

- 1.2 **Performance of Services.** All services rendered by Consultant hereunder ("Services") and all work product created thereby ("Work Product") shall meet the general parameters and other specifications agreed by the Parties. Client's obligation to pay fees and expenses shall be met and paid on a monthly basis by the Client as per invoices which shall be delivered by the Consultant to the Client.
- 1.3 **Periodic Reporting.** Consultant shall provide, at a minimum, monthly reports during the period of this Agreement to the Client, represented by its Mayor. These monthly reports of Services may be in the form of written summary, conference calls, or in person meetings as determined solely by the Client on a month-by-month basis.

## **Article 2. COMPENSATION**

- 2.1 **Consulting Fees.** For the purposes of this Article 2, "Consulting Fees" shall mean and be deemed to include the Monthly Retainer Fee (as provided under Paragraph 2.2) and Expenses (as provided under Paragraph 2.3), plus any Interest (as provided in Paragraph 2.4).
- 2.2 **Monthly Retainer Fee.** The Consulting Fees accrued by the Consultant in respect to the performance of Services shall be a flat retainer of Four Thousand Six Hundred and Fifty Dollars (US\$4,650.00) per month.
- 2.3 **Incidental Expenses.** (a) Irrespective of the Monthly Retainer Fee (as provided under Paragraph 2.2), Client shall be responsible for the payment of all Incidental and other Expenses reasonably incurred by the Consultant in respect of the performance of Services, excluding expenses normally incurred by the Consultant in the operations and administration of its office or meals and promotional hosting. Expenses or Incidental Expenses shall include, but not be limited to: a flat rate fee of \$60.00 for proportional cellular and long distance charges; copying, postage or fax costs; and travel expenses, including mileage at the rate set by the IRS and reasonable lodging charges; Provided that any Incidental Expenses or other Expenses, in order to be reimbursable, shall be expenses that the Client would legally and properly be able to incur. All Incidental Expenses or other Expenses shall be documented by the Consultant. Any expense exceeding \$250 shall be reimbursable only if approved, in writing, prior to being incurred by Consultant; Provided further that any Incidental Expenses or other Expenses that will exceed a total of \$500 in any one month shall be reimbursable only if approved, in writing, prior to being incurred by Consultant.
- (b) When appropriate, Expenses or Incidental Expenses incurred by the Consultant on behalf of two or more of the Consultant's clients will be divided equally among those clients.
- 2.4 **Monthly Invoicing; Payment Due Immediately; Interest.** On a monthly basis, Consultant shall submit to the Client an itemized invoice for all Consulting Fees accrued. Payment in respect of such invoices shall be due and payable immediately by Client to Consultant. In the event the Client shall not have tendered payment to the Consultant within fifteen (15) working days of the date of receipt of such invoice, the Consultant may, at its discretion, charge interest at the rate of One and One Half (1.5%) percent, compounded monthly, on the outstanding balance of such Consulting Fees due and payable by Client. In addition, the Consultant shall have the right to suspend its performance of Services, without penalty of breach on the part of the Consultant.

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### **Article 3. APPLICABLE LAW AND DISPUTES**

- 3.1 **Legal Basis and Arbitration.** This Agreement is based on and shall be interpreted under the laws of the state of Washington. All claims and disputes between the Parties relating in any way to this Agreement, or its performance, interpretation, validity or breach, or to any subject mentioned in this Agreement, shall be arbitrated under the commercial rules of the American Arbitration Association, in Seattle, Washington, before one neutral arbitrator. The award of the arbitrator may be confirmed and enforced in any court having jurisdiction.
- 3.2 **Good Faith Resolution.** The Parties shall first make a good faith effort to resolve any differences informally within Fifteen (15) business days of the date on which one of the Parties informs the other of the dispute. No Party may initiate arbitration proceedings until the conclusion of this period.
- 3.3 **Remedies.** (a) In the event the Consultant may owe a refund to the Client, Consultant shall deduct such amount from the total amount due and payable as per the next and any subsequent monthly invoices, or provide full refund within Thirty (30) business days if refund exceeds total amount of remaining terms of this Agreement.  
(b) In the event the Client may owe amounts to the Consultant, such amounts shall become due and payable by the Client immediately and Consultant may accrue interest on such amounts as provided in Paragraph 2.2 from the date the amounts were originally due and payable.

### **Article 4. LEGAL COMPLIANCE AND DISCLOSURE**

- 4.1 **Public Disclosure Commission Compliance.** Consultant shall be responsible for complying with the provisions of the Washington State Disclosure -- Campaign Finances -- Lobbying Act (Chapter 42.17 RCW) relating to lobbyist disclosure including, but not limited to, the accurate and timely filing of the monthly Lobbyist Monthly Expense Report Form (L-2). Client shall be responsible for complying with the provisions of the Washington State Disclosure-- Campaign Finances -- Lobbying Act (Chapter 42.17 RCW) relating to employer reporting and disclosure including, but not limited to, the annual Employers of Registered Lobbyist Form (L-3). Consultant and Client agree to be mutually responsible for the filing of the Lobbyist Registration Form (L-1) as required.

### **Article 5. TERM AND TERMINATION**

- 5.1 **Term of Agreement.** This Agreement shall commence from and be deemed effective on the date first set forth hereinabove and shall continue in full force and effect thereafter for so long as the Consultant continues to perform Services for the Client in accordance with this Agreement, with a term anticipated to be one (1) year, unless either Party provides Notice to the other under Paragraphs 5.2 and 9.1 of this Agreement.
- 5.2 **Termination.** Either Party may terminate this Agreement for any reason whatsoever upon giving Thirty (30) business days notice to the other Party. In the event of a termination, the Consultant shall submit a final invoice for amounts not previously invoiced to Client specifying the Consulting Fees and Expenses accrued up to the date of termination. This Agreement shall in no event be deemed terminated as long as Client may owe any monies to Consultant as Consulting Fees or otherwise, and Consultant shall be entitled to all rights and/or remedies provided hereby with respect thereto.

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## **Article 6. INDEPENDENT CONTRACTOR STATUS**

- 6.1 **Independent Contractor Status.** Consultant shall at all times be deemed an independent contractor of the Client and in no event shall Consultant be deemed an employee, agent, joint venturer, or partner of the Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee by and between Consultant and Client and/or as creating an exclusive arrangement between them. In this regard, Consultant shall have the right to determine the method, details, and means of performing Services to be carried out for the Client and Client shall not have the right to, and shall not in any manner, control or attempt to control the method, details and means of performance by the Consultant of Services.

## **Article 7. CONFLICTS OF INTEREST**

- 7.1 **Consultant Representation.** Consultant represents that, as of the inception date of this Agreement, it is not aware of any conflict of interest with any other of its clients, or otherwise. In the event such a conflict should arise, Consultant agrees to promptly disclose such conflict to Client. If the conflict cannot be resolved in a good faith manner including, but not limited to, the hiring of a substitute Consultant at Consultant's expense, then this Agreement may be terminated pursuant to the provisions of Paragraph 5.2.
- 7.2 **Similar Services to Similar Entity.** Consultant will provide written notice to Client in the event that similar services will be offered to a substantially similar entity. Consultant must obtain written approval from Client prior to representing such entity.

## **Article 8. CONFIDENTIAL INFORMATION**

- 8.1 **Definition; Term of protection.** All documents and other information which shall be submitted or communicated by either of Parties within the context of this Agreement or otherwise related to the Consultant's performance of the Services ("Information") shall remain the exclusive property of the Party which shall have produced such Information (the "Owner") and shall be held by the other Party (the "Recipient") in trust and treated as confidential during the period of validity of this Agreement and after for a period extending Three (3) years from the date of termination of this Agreement.
- 8.2 **Non-Disclosure.** The Recipient of Information shall use its best efforts, within the bounds of the law, to protect Information from disclosure to others using the same degree of care which it uses to protect its own confidential or proprietary information of like importance, and in no event using less than a reasonable degree of care. The Consultant further agrees that Information received by it in respect to the performance of the Services shall be used only as expressly authorized or directed by the Client and or as otherwise contemplated by this Agreement, and not for any other purpose. Notwithstanding the foregoing, the Consultant may disclose Information received by it hereunder: (i) to Affiliates who agree in advance, in writing, to be bound by this Agreement; (ii) to employees and independent contractors and employees and independent contractors of its Affiliates who have a need to know for the purposes of this Agreement and who agree to protect the received Information from unauthorized use and disclosure by and under the terms of a written Non-Disclosure Agreement; (iii) to potential vendors as specifically approved by the Client and subject to a non-disclosure agreement between the Consultant and the potential vendor. A Recipient shall not otherwise disclose any Information to a third party without the prior written consent of the Owner.

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8.3. **Exceptions.** The restrictions contained in this Agreement on the use and disclosure of Information, featuring in particular Sections 6.1 and 6.2, shall not apply to information that:

- (a) Was publicly known at the time of Owner's communication thereof to Recipient;
- (b) Becomes publicly known through no fault of Recipient;
- (c) Was in Recipient's possession free of any obligation of confidence or non-disclosure at the time of Owner's communication thereof to Recipient;
- (d) Is developed by Recipient independently of and without reference to any of Owner's Information or other information that Owner disclosed in confidence to any third party; or
- (e) Is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or
- (f) Is identified by Owner as no longer proprietary or confidential.

8.4 **Mandatory Disclosure.** In the event Recipient is required by law, regulation or court order to disclose any of Owner's Information, Recipient will promptly notify the Owner in writing prior to making any such disclosure in order to facilitate Owner seeking a protective order or other appropriate remedy from the proper authority, and Recipient hereby agrees to cooperate with Owner in seeking such order or remedy.

8.5 **Liability and Damages.** The Parties acknowledge that Information is unique and valuable and that a disclosure in breach of this Agreement will result in irreparable injury to Owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of this Article 8, the Owner shall be entitled to specific performance, and injunctive and other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

## **Article 9. GENERAL PROVISIONS**

9.1 **Notices.** Any notices to be given hereunder by any party to another party may be effected by personal delivery, in writing, by registered or certified mail (prepaid postage with return receipt requested), or by overnight delivery service. Date of actual receipt of notification shall be deemed to be the effective date for such notice. Addresses listed in the first paragraph of this Agreement shall be deemed to be the proper delivery address for all notices unless communicated in writing to both parties during term of Agreement.

9.2 **Assignment.** Neither Party may assign this Agreement nor any portion hereof, except to an Affiliate or successor in interest, without the prior written consent of the other.

9.3 **Entire Agreement; Waivers.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and no other agreements, understandings, or representations or discussion of any kind shall be deemed incorporated unless expressly set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged. Any delay or forbearance by either party in exercising any right hereunder shall not be deemed a waiver of that right.

9.4 **Severability.** If any provision of this Agreement is held by a court of law of competent jurisdiction to be invalid, void, or unenforceable for any reason whatsoever, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

9.5 **Headings; References.** The headings in this Agreement are inserted convenience of reference only and shall not in any way affect the meaning of or interpretation of this Agreement. References to Paragraphs and

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Articles shall refer to the Paragraphs and Articles of this Agreement. The words "herein", "hereinabove", "hereinbelow", and words of similar import shall be deemed references to the several provisions of this Agreement.

9.6 **Survival.** Any covenants intended to be performed subsequent to the termination of this Agreement along with any representations and warranties made herein shall survive the termination of this Agreement, featuring in particular warranties related to confidentiality and non-disclosure of Information. This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

9.7 **Legal Fees.** In the event of litigation arising out of the performance of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

**IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first written above.**

**Consultant:**

**Client:**

**Principled Solutions**

**City of Auburn**

**By: \_\_\_\_\_**

**By: \_\_\_\_\_**

**Thomas S. Dooley, Its President**

**Pete Lewis, Its Mayor**



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